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Comparing Hemp Provisions in the 2014 and 2018 Farm Bills

Changes enacted in the 2014 and 2018 farm bills removed long-standing federal restrictions on the cultivation of hemp. Although the 2018 farm bill expanded on provisions allowing for commercial hemp cultivation under federal law, some U.S. states have opted to remain under the pilot program established in the 2014 farm bill, which allows for hemp cultivation only for research purposes and only within states that allow for its cultivation under state law. **Figure 1** shows the current status of hemp production by state as of December 2021, identifying states that have continued to operate under the 2014 farm bill program.

Enacted Changes in the Past Farm Bills

Hemp is a variety or cultivar of *Cannabis sativa*, the same plant as marijuana, grown for non-psychoactive purposes. Both the 2014 and the 2018 farm bills established separate statutory definitions for hemp based on the cannabis plant's delta-9 tetrahydrocannabinol (THC) concentration. Both farm bills defined hemp as cannabis with a delta-9-THC concentration of not more than 0.3% on a dry weight basis, thus distinguishing *hemp* from marijuana. Under federal law, *marihuana* (as it is spelled in the *U.S. Code*) is a Schedule I drug under the Controlled Substances Act (CSA, 21 U.S.C. §§802 et seq.) and is subject to regulation by the Drug Enforcement Administration (DEA). The 2018 farm bill removed *hemp* (as defined at 7 U.S.C. §1639o) from the legal definition of *marihuana* (21 U.S.C. § 802(16)). This established hemp as an agricultural crop eligible for U.S. Department of Agriculture (USDA) farm programs, if it is grown under license and complies with USDA regulations.

The 2014 and 2018 farm bills established very different regulatory frameworks for hemp cultivation.

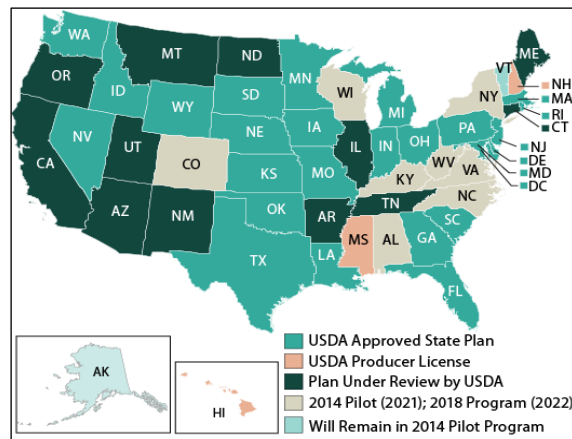
- The 2014 farm bill (Agricultural Act of 2014, P.L. 113-79, §7606) established the **Hemp Research Pilot Program** (7 U.S.C. §5940). The pilot program allows for hemp cultivation for research purposes only (i.e., not for commercial use) by either *institutions of higher education* (as defined in 20 U.S.C. §1001) or state departments of agriculture. Production is subject to state/territory laws and regulations and was not legalized under federal law or in interstate commerce (e.g., crossing state borders). The program did not include cultivation by Indian tribes.
- The 2018 farm bill (Agriculture Improvement Act of 2018 (P.L. 115-334, §§ 10113-10114, 12619) expanded on hemp provisions in the 2014 farm bill, establishing the **Domestic Hemp Production Program**, amending the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. §§1639o-s). This program is administered by USDA and complies with USDA regulations promulgated in consultation with the U.S. Attorney General (86 *Federal Register* 5596, January 19, 2021). Under the program, USDA is responsible for evaluating

and approving plans submitted by state, territory, or tribal authorities, in cases where local authorities want to have primary regulatory authority over hemp production under their jurisdiction. If a state, territory, or tribal plan is not approved by USDA, then hemp production will be subject to USDA's general license.

The 2018 farm bill authorized appropriations of "such sums as are necessary" to carry out the program. USDA received \$16.4 million in FY2020 and \$16.7 million in FY2021 to implement its hemp production program.

Changes enacted in the 2018 farm bill further relaxed certain federal restrictions, making hemp production eligible for federal crop insurance and USDA disaster and research programs. According to industry reports, since the 2018 farm bill was enacted, an estimated \$21.9 million in federal grants has been awarded to support U.S. hemp production. The enacted changes also helped to reduce some of the legal risks associated with financing hemp production or processing by farm lenders.

Figure 1. Status of State Hemp Programs, 2021



Source: CRS from USDA, "Status of State and Tribal Hemp Production Plans for USDA Approval" (accessed December 2021).

2014 Farm Bill Pilot Program Extension

The 2014 farm bill's Hemp Research Pilot Program was scheduled to be repealed by the 2018 farm bill, effective one year after the date USDA "establishes a plan" under the AMA (§7506(b)), or roughly October 2020. Concerns about USDA's regulatory requirements, however, resulted in some states opting out of the 2018 farm bill program for the 2020 and 2021 crop years in favor of continuing with the existing pilot program. Congress has extended the Hemp Research Pilot Program twice through appropriations actions. The first action extended the 2014 pilot program through September 30, 2021 (P.L. 116-159, Div. A, §122). The second action extended the program until January 1, 2022 (P.L. 116-260, Div. A, Title VII, §782).

Figure 2. Comparing Hemp Provisions in the 2014 and 2018 Farm Bills

2014 Farm Bill (Agricultural Act of 2014, P.L. 113-79, §7606); 7 U.S.C. §5940	2018 Farm Bill (Agriculture Improvement Act of 2018, P.L. 115-334, §§ 10113-10114, 12619); 7 U.S.C. §1639o-s
<p>Defined <i>Industrial Hemp</i>. Established a statutory definition of <i>industrial hemp</i> (7 U.S.C. §5940) based on the cannabis plant's delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3% on a dry weight basis, differentiating it from <i>marihuana</i> (as defined in U.S. law).</p> <p>Established the Hemp Research Pilot Program. Allowed hemp production in U.S. states for research purposes only (i.e., not for commercial use). Hemp cultivation is allowed only by "institutions of higher education" and "state departments of agriculture" if legal under state law where the institution or state department is located.</p> <p>Granted Eligibility to States. Allowed hemp production in U.S. states only (including U.S. territories) where state laws and regulations allowed for production. The pilot program did not cover hemp production by Indian Tribes.</p> <p>Remained Illegal Under Federal Law. Under the pilot program, U.S. state laws and regulations oversee hemp cultivation within states' borders. Hemp production continues to be illegal under federal law and in interstate commerce, and is a Schedule I drug under the Controlled Substances Act (CSA, 21 U.S.C. §§802 et seq.) regulated by the Drug Enforcement Administration. Hemp production remains ineligible for certain USDA research, crop insurance, and disaster programs.</p>	<p>Defined <i>Hemp</i>. Established a statutory definition of <i>hemp</i> (7 U.S.C. §1639o) removing <i>hemp</i> from the CSA's statutory definition of <i>marihuana</i>. The new definition continued to be based on the cannabis plant's delta-9 THC concentration of not more than 0.3% on a dry weight basis, but was expanded to include seeds and "all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers."</p> <p>Established the Domestic Hemp Production Program. Amended the Agricultural Marketing Act of 1946 (AMA, 7 U.S.C. §1621 et seq.), establishing a new program administered by USDA's Agricultural Marketing Service (AMS), making hemp production federally legal subject to USDA regulatory requirements (86 <i>Federal Register</i> 5596).</p> <p>Granted Eligibility to States, Territories, and Tribes. Allowed hemp production with oversight either by the state, territory, or tribal authority (subject to USDA's approval) or by USDA under a general license (effective March 2021).</p> <p>Removed Restrictions Under Federal Drug Laws. Descheduled <i>hemp</i> (as defined) from the definition of <i>marihuana</i> in the CSA and from DEA oversight, and eased interstate commerce restrictions. Congress explicitly retained a role for DEA and the U.S. Attorney General (AG) to carry out certain activities, including requiring USDA to consult with the AG in auditing state compliance, providing technical assistance, reporting and enforcing violations, and sharing information with federal law enforcement. Congress explicitly preserved the authority of the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§301 et seq.) over certain hemp-derived products.</p> <p>Granted Eligibility Under Some USDA Programs. Made hemp production eligible for certain USDA research, crop insurance, and disaster programs.</p> <p>Scheduled Repeal of the Hemp Pilot Program. Repealed the pilot program one year after USDA "establishes a plan" carrying out the hemp provisions in the 2018 farm bill.</p>

Source: CRS.

In extending the 2014 pilot program, Congress expressed concerns that USDA's regulatory requirements in its interim final rule (84 *Federal Register* 58522) may "create compliance challenges for the regulated community" (P.L. 116-260, H. Comm. Print, Division A, Title I). Among the regulatory challenges noted by congressional appropriators were sampling and testing protocols (including sampling of only flowering tops rather than the whole plant), a narrow testing window prior to harvest, an "inflexible" negligence threshold, lack of alternatives to the use of DEA registered laboratories, and THC measurements based on Total THC (or the sum of the delta-9 THC and tetrahydrocannabinolic acid [THCA]). USDA's final rule (86 *Federal Register* 5596, January 19, 2021) addressed some of these concerns by expanding the testing window, adopting whole plant sampling, and raising the negligence threshold. Other regulatory aspects were retained in USDA's final rule, including the requirement for DEA registered labs and THC measurement based on Total THC.

Considerations for Congress

There are many reasons why some states opted to remain in the 2014 farm bill's hemp pilot program rather than transition to USDA's new hemp program created in the 2018 farm bill. Several states had established their hemp production laws and regulatory programs years ago and needed time to modify their own requirements to conform to USDA's regulatory framework and to submit a state plan that fully complies with USDA requirements or that USDA may readily approve. Some state authorities and industry stakeholders have also questioned whether USDA has the capacity to administer additional general hemp licenses if the state authorities elect to have USDA regulate hemp production within their state. Some states may be reluctant to give oversight authority to USDA if they believe some of the regulatory requirements are too onerous for growers or

are concerned the DEA is continuing to play an outsized role in overseeing hemp production nationwide. However, in enacting the 2018 farm bill provisions related to hemp, Congress explicitly retained a role for DEA and the U.S. Attorney General in carrying out certain activities, including consultations in auditing compliance, providing technical assistance, reporting and enforcing violations, and sharing information with federal law enforcement.

During 2020 and 2021, hemp production in roughly half of all U.S. states was grown under the 2014 farm bill pilot program, not under USDA-approved plans or a USDA general license in accordance with the 2018 farm bill. For 2022, fewer states are opting to operate under the 2014 hemp pilot program. As of December 2021, a reported 33 states now have USDA-approved plans for the 2022 crop year (including several states operating under the pilot program in 2021). Another three states—Hawaii, Mississippi, and New Hampshire—plan to grow hemp under a USDA general license. Still, another 12 states are waiting USDA approval of their submitted state plans, and 2 states—Alaska and Vermont—are continuing to grow hemp under the 2014 pilot program, according to USDA. **Figure 1** shows the current status among states submitting hemp production plans for USDA approval.

As Congress considers whether to again extend the 2014 hemp pilot program, some in Congress have continued to introduce hemp legislation, such as S. 1005 that would raise the existing statutory definition of hemp to 1% THC and would relax certain regulatory requirements governing USDA's hemp program. These and other proposals could be considered during the next omnibus farm bill debate.

Renée Johnson, Specialist in Agricultural Policy

IFI 1984

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